In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-585

WILLIAM REILLY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner brought this suit against the United States for injuries he sustained while attempting to board the U.S.N.S. SUAMICO, an oil tanker owned by the United States and operated by Mathiasen's Tanker Industries, Inc.[1] At the time of the incident, the ship was anchored at Terrington Basin, Goose Bay, Labrador. Petitioner was transported to the ship in an LCM (landing craft mechanized). He injured his hip when attempting to transfer from the LCM to the gangway of the ship.

The district court entered a judgment for petitioner, finding that the SUAMICO was unseaworthy at the time petitioner attempted to board because the LCM was not secured to the ship during the boarding and because no member of the ship's crew was present to assist petitioner in boarding the ship (Pet. App. 33a).

[1]Plaintiff's suit against Mathiasen was dismissed by agreement of the parties at the beginning of trial (Pet. App. 6a, n. 3).

The court of appeals reversed (Pet. App. 3a-14a) on the ground that the district court's "findings of fact are clearly erroneous" (*id.* at 6a). The court of appeals recognized (*id.* at 7a) that a finding of fact may be set aside as clearly erroneous only when "the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed" (*United States* v. *Oregon State Medical Society*, 343 U.S. 326, 339). It stated: "After a careful review of the record, we are convinced that the undisputed physical evidence conflicts with [petitioner's] version of the accident and supports the version of the United States" (*id.* at 7a).

Petitioner's only contention is that the court of appeals gave insufficient weight to the district court's findings. It is clear, however, that the court of appeals applied the proper legal standard, fully recognizing that "the trier of fact has the primary responsibility of weighing the evidence" (*id.* at 6a) and that the district court's findings could be set aside only if the evidence is incapable "of supporting with reason the conclusions expressed" (*ibid.*). A thorough analysis of the record convinced the court of appeals that "[t]he evidence is insufficient from which to find that [petitioner's] injuries, either in whole or in part, were caused by any unseaworthiness of the SUAMICO or negligence of the United States" (*id.* at 11a).

Futher review of the evidence by this Court is not warranted.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

DECEMBER 1975.

DOJ-1975-12